

SUBCHAPTER 1J - EMPLOYEE RELATIONS

SECTION .0100 - EMPLOYEE RELATIONS SECTION

25 NCAC 01J .0101 AUTHORITY

History Note: Authority G.S. 126-4;
Eff. February 1, 1976;
Amended Eff. October 1, 1977;
Repealed Eff. August 1, 1978.

25 NCAC 01J .0102 ORGANIZATION

History Note: Authority G.S. 126-4;
Eff. February 1, 1976;
Repealed Eff. December 1, 1978.

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History Note: Authority G.S. 126-4;
Eff. February 1, 1976;
Repealed Eff. August 1, 1978.

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History Note: Authority G.S. 126-16;
 Eff. February 1, 1976;
 Repealed Eff. October 1, 1977.

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History Note: Authority G.S. 126-4;
 Eff. February 1, 1976;
 Amended Eff. December 1, 1995;
 Recodified to 25 NCAC 01C .0901 Eff. December 29, 2003.

25 NCAC 01J .0402 POLICY: SERVICE AWARDS PROGRAM
25 NCAC 01J .0403 TYPES OF AWARDS

History Note: Authority G.S. 126-4;
 Eff. February 1, 1976;
 Amended Eff. May 1, 1989;
 Repealed Eff. December 1, 1995.

25 NCAC 01J .0404 AGENCY RESPONSIBILITY

History Note: Authority G.S. 126-4;
 Eff. February 1, 1976;
 Amended Eff. December 1, 1995;
 Recodified to 25 NCAC 01C .0902 Eff. December 29, 2003.

25 NCAC 01J .0405 EXEMPT EMPLOYEES

History Note: Authority G.S. 126-4;
 Eff. February 1, 1976;
 Repealed Eff. December 1, 1995.

25 NCAC 01J .0406 ELIGIBILITY REQUIREMENTS

History Note: Filed as a Temporary Amendment Eff. January 1, 1989 for a Period of 180 Days to Expire on June 29, 1989;
 Authority G.S. 126-4(10);

Eff. February 1, 1976;
Amended Eff. December 1, 1995; May 1, 1989; March 1, 1989; July 1, 1983;
Recodified to 25 NCAC 01C .0903 Eff. December 29, 2003.

25 NCAC 01J .0407 ADDITIONAL CREDIT
25 NCAC 01J .0408 OTHER PROVISIONS

History Note: Filed as a Temporary Amendment Eff. January 1, 1989 for a Period of 180 Days to Expire on June 29, 1989;
Authority G.S. 126-4(10);
Eff. February 1, 1976;
Amended Eff. July 1, 1989; May 1, 1989; March 1, 1989; January 1, 1989;
Repealed Eff. December 1, 1995.

25 NCAC 01J .0409 SELECTING THE SERVICE EMBLEMS
25 NCAC 01J .0410 PURCHASING
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History Note: Authority G.S. 126-4;
Eff. February 1, 1976;
Repealed Eff. December 1, 1995.

25 NCAC 01J .0501 GENERAL PROVISIONS
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25 NCAC 01J .0506 DISCRIMINATION

History Note: Authority G.S. 126-1A (until July 1, 1996) then 126-1.1; 126-4(9); 126-4(10); 126-4(17); 126-7.2; 126-16; 126-25; 126-34; 126-34.1; 126-34.2; 126-35; 126-36; 126-37; 126-38; 126-39; 150B-23;
Eff. February 1, 1976;
Amended Eff. August 1, 2000;
Temporary Amendment Eff. February 18, 1999;
Amended Eff. December 1, 1995; May 1, 1989; April 1, 1989; February 1, 1989; July 1, 1988; December 1, 1985; October 1, 1985; October 1, 1980; October 1, 1977;
Repealed Eff. March 1, 2005.

25 NCAC 01J .0507 LEAVE IN CONNECTION WITH GRIEVANCES
25 NCAC 01J .0508 SPC APPROVAL OF ADR AGREEMENT

History Note: Authority G.S. 126-4(9); 126-4(17); 126-34.2; 126-35; 150B-23;
Eff. December 1, 1985;
Amended Eff. December 1, 1995; April 1, 1989;
Repealed Eff. March 1, 2005.

25 NCAC 01J .0509 AGENCY GRIEVANCE REPORTS
25 NCAC 01J .0510 FINAL AGENCY ACTION

25 NCAC 01J .0511 GRANDFATHER CLAUSE

History Note: Authority G.S. 126-4(9); 126-7.2; 126-35; 126-37; 126-38; 150B-23(a);
Eff. December 1, 1995;
Repealed Eff. March 1, 2005.

SECTION .0600 - DISCIPLINARY ACTION: SUSPENSION AND DISMISSAL

25 NCAC 01J .0601 PERMANENT EMPLOYEES

25 NCAC 01J .0602 WRITTEN STATEMENT

History Note: Authority G.S. 126-35; 126-39;
Eff. February 1, 1976;
Amended Eff. October 1, 1977;
Repealed Eff. October 1, 1984.

25 NCAC 01J .0603 APPEALS

(a) A career employee who has been demoted, suspended, or dismissed shall have 15 calendar days from the date of his or her receipt of written notice of such action to file an appeal with his department/university grievance procedure. If an employee does not appeal his or her dismissal through the agency grievance procedure within 15 days, then the employee shall have no right to file a contested case with the Office of Administrative Hearings under G.S. 126-34.02.

(b) If an employee appeals his or her dismissal through the agency grievance procedure, then the initial dismissal letter shall not constitute the final agency decision, but the final agency decision shall be the decision made at the conclusion of the employee's appeal through the agency grievance procedure.

(c) Grievances that allege discrimination, harassment, or retaliation shall follow the agency grievance process. Employees with grievances alleging discrimination, harassment, or retaliation who do not follow the agency grievance process shall have no right to file a contested case with the Office of Administrative Hearings.

History Note: Authority G.S. 126-1A; 126-34.01; 126-34.02; 126-35; 150B, Article 3; 150B-23;
Eff. February 1, 1976;
Amended Eff. March 1, 1994; April 1, 1989; December 1, 1984; October 1, 1984;
Temporary Amendment Eff. February 18, 1999;
Amended Eff. February 1, 2011; July 18, 2002;
Temporary Amendment Eff. May 23, 2014;
Amended Eff. April 1, 2015.

25 NCAC 01J .0604 JUST CAUSE FOR DISCIPLINARY ACTION

(a) Any employee, regardless of occupation, position or profession may be warned, demoted, suspended or dismissed by the appointing authority. Such actions may be taken against career employees as defined by the State Human Resources Act, only for just cause. The provisions of this section apply only to employees who have attained career status. The degree and type of action taken shall be based upon the sound and considered judgment of the appointing authority in accordance with the provisions of this Rule. When just cause exists the only disciplinary actions provided for under this Section are:

- (1) Written warning;
- (2) Disciplinary suspension without pay;
- (3) Demotion; and
- (4) Dismissal.

(b) There are two bases for the discipline or dismissal of employees under the statutory standard for "just cause" as set out in G.S. 126-35. These two bases are:

- (1) Discipline or dismissal imposed on the basis of unsatisfactory job performance, including grossly inefficient job performance.
- (2) Discipline or dismissal imposed on the basis of unacceptable personal conduct.

(c) Either unsatisfactory or grossly inefficient job performance or unacceptable personal conduct as defined in 25NCAC 1J.0614 of this Section constitute just cause for discipline or dismissal. The categories are not mutually exclusive, as certain actions by employees may fall into both categories, depending upon the facts of each case. No disciplinary action shall be invalid solely because the disciplinary action is labeled incorrectly.

(d) The imposition of any disciplinary action shall comply with the procedural requirements of this Section.

History Note: Authority G.S. 126-1A; 126-35;
Eff. February 1, 1976;
Amended Eff. October 1, 1995; March 1, 1994; August 2, 1993; October 1, 1984.

25 NCAC 01J .0605 DISMISSAL FOR UNSATISFACTORY PERFORMANCE OF DUTIES

(a) The intent of this Section is to assist and promote improved employee performance, rather than to punish. This Rule covers all types of performance-related inadequacies. This Section does not require that successive disciplinary actions all concern the same type of unsatisfactory performance. Disciplinary actions related to personal conduct may be included in the successive system for performance-related dismissal provided that the employee receives at least the number of disciplinary actions, regardless of the basis of the disciplinary actions, required for dismissal on the basis of inadequate performance. Disciplinary actions administered under this Section are intended to bring about a permanent improvement in job performance. Should the required improvement later deteriorate, or other inadequacies occur, the supervisor may deal with this new unsatisfactory performance with further disciplinary action.

(b) In order to be dismissed for a current incident of unsatisfactory job performance an employee must first receive at least two prior disciplinary actions: First, one or more written warnings followed by a warning or other disciplinary action which notifies the employee that failure to make the required performance improvements may result in dismissal.

(c) Prior to the decision to dismiss an employee, a management representative must conduct a pre-dismissal conference with the employee in accordance with the procedural requirements of this Section.

(d) An employee who is dismissed must receive written notice of the specific reasons for the dismissal, as well as notice of any applicable appeal rights.

(e) Failure to give specific written reasons for the dismissal, failure to give written notice of applicable appeal rights, or failure to conduct a predissmissal conference constitute procedural violations with remedies as provided for in 25 NCAC 1B .0432. Time limits for filing a grievance do not start until the employee receives written notice of any applicable appeal rights.

History Note: Authority G.S. 126-4; 126-35;
Eff. February 1, 1976;
Amended Eff. October 1, 1995; July 1, 1989; January 1, 1989; December 1, 1984.

25 NCAC 01J .0606 DISMISSAL FOR GROSSLY INEFFICIENT JOB PERFORMANCE

(a) Dismissal on the basis of grossly inefficient job performance is administered in the same manner as for unacceptable personal conduct. Employees may be dismissed on the basis of a current incident of grossly inefficient job performance without any prior disciplinary action.

(b) Prior to dismissal of a career employee on the basis of grossly inefficient job performance, there shall be a pre-dismissal conference between the employee and the person recommending dismissal. This conference shall be held in accordance with the provisions of 25 NCAC 1J.0613.

(c) Dismissals for grossly inefficient job performance require written notification to the employee. Such notification must include specific reasons for the dismissal and notice of the employee's right of appeal.

(d) Failure to give specific written reasons for the dismissal, failure to give written notice of applicable appeal rights, or failure to conduct a predissmissal conference constitute procedural violations with remedies as provided for in 25 NCAC 1B .0432. Time limits for filing a grievance do not start until the employee receives written notice of any applicable appeal rights.

History Note: Authority G.S. 126-4(7a);
Eff. February 1, 1976;
Amended Eff. October 1, 1995; September 1, 1991; March 1, 1990; November 1, 1989.

25 NCAC 01J .0607 EXAMPLES OF RELATING TO PERFORMANCE OF DUTIES

History Note: Authority G.S. 126-4;
 Eff. February 1, 1976;
 Repealed Eff. October 1, 1984.

25 NCAC 01J .0608 DISMISSAL FOR PERSONAL CONDUCT

- (a) Employees may be dismissed for a current incident of unacceptable personal conduct, without any prior disciplinary action.
- (b) Prior to dismissal of a career employee on the basis of unacceptable personal conduct, there shall be a pre-dismissal conference between the employee and the person recommending dismissal. This conference shall be held in accordance with the provisions of 25 NCAC 1J .0613.
- (c) Dismissals for unacceptable personal conduct require written notification to the employee. Such notification must include specific reasons for the dismissal and notice of the employee's right of appeal.
- (d) Failure to give specific written reasons for the dismissal, failure to give written notice of applicable appeal rights, or failure to conduct a pre-dismissal conference constitute procedural violations with remedies as provided for in 25 NCAC 1B .0432. Time limits for filing a grievance do not start until the employee receives written notice of any applicable appeal rights.

History Note: Authority G.S. 126-1A; 126-4; 126-35;
 Eff. February 1, 1976;
 Amended Eff. October 1, 1995; March 1, 1994; July 1, 1989; August 1, 1985.

25 NCAC 01J .0609 EXAMPLES OF CAUSES RELATING TO PERSONAL CONDUCT

History Note: Authority G.S. 126-4; 126-35;
 Eff. February 1, 1976;
 Repealed Eff. October 1, 1984.

25 NCAC 01J .0610 WRITTEN WARNING

(a) The supervisor shall monitor and promote the satisfactory performance of work assignments and assure that employees do not engage in unacceptable personal conduct. All types of performance-related job inadequacies may constitute unsatisfactory job performance under this Section. Unacceptable personal conduct may be work-related or non-work-related conduct and may be intentional or unintentional. When the supervisor determines that disciplinary action is appropriate for unsatisfactory job performance, a written warning is the first type of disciplinary action that an employee shall receive. The supervisor may elect to issue a written warning for grossly inefficient job performance or unacceptable personal conduct. The written warning shall:

- (1) inform the employee that this is a written warning, and not some other non-disciplinary process such as counseling;
 - (2) inform the employee of the specific issues that are the basis for the warning;
 - (3) tell the employee what specific improvements, if applicable, shall be made to address these specific issues;
 - (4) tell the employee the time frame allowed for making the required improvements or corrections. Absent a specified time frame, 60 days is the time frame allowed for correcting unsatisfactory job performance and immediate correction is required for grossly inefficient job performance or unacceptable personal conduct; and
 - (5) tell the employee the consequences of failing to make the required improvements or corrections;
- (b) A written warning shall be issued in accordance with the procedural requirements of this Section.

History Note: Authority G.S. 126-4; 126-34.02;
Eff. February 1, 1976;
Amended Eff. October 1, 1995; November 1, 1990; January 1, 1989; September 1, 1988;
Temporary Amendment Eff. May 23, 2014;
Amended Eff. April 1, 2015.

25 NCAC 01J .0611 DISCIPLINARY SUSPENSION WITHOUT PAY

An employee may be suspended without pay for disciplinary purposes for unsatisfactory job performance after the receipt of at least one prior disciplinary action or for causes relating to any form of unacceptable personal conduct or grossly inefficient job performance. A disciplinary suspension without pay for an employee who is subject to the overtime compensation provisions of the Fair Labor Standards Act (FLSA) must be for at least one full work day, but not more than two work weeks. The length of a disciplinary suspension without pay for an employee who is exempt from the overtime compensation provisions of the FLSA must be for at least one full work week, but not more than two full work weeks. Prior to placing any employee on disciplinary suspension without pay, a management representative shall conduct a pre-suspension conference with the employee in accordance with the procedural requirements of this Section. An employee who has been suspended without pay must be furnished a statement in writing setting forth the specific acts or omissions that are the reasons for the suspension and the employee's appeal rights.

An agency or university has the option of imposing the same periods of disciplinary suspension without pay upon all employees as long as the period is the same as for employees exempt from the overtime provisions of the FLSA as set forth in this Section.

History Note: Authority G.S. 126-4(6); 126-35;
Eff. October 1, 1984;
Amended Eff. October 1, 1995; January 1, 1989; September 1, 1988;
Pursuant to G.S. 150B-33(b)(9), Administrative Law Judge Beecher Gray declared rule 25 NCAC 01J .0611 void as applied in Michael A. Kelly, Steven Wayne Mobley v. NC Department of Environment and Natural Resources (04 OSP 1572; 04 OSP 1573; Affirmed 664 S.E.2d 625).

25 NCAC 01J .0612 DEMOTION

(a) Any employee may be demoted as a disciplinary measure. Demotion may be made on the basis of either unsatisfactory or grossly inefficient job performance or unacceptable personal conduct.

- (1) Unsatisfactory Job Performance. An employee may be demoted for unsatisfactory job performance after the employee has received at least one prior disciplinary action.
- (2) Grossly Inefficient Job Performance. An employee may be demoted for grossly inefficient job performance without any prior disciplinary action.
- (3) Personal Conduct. An employee may be demoted for unacceptable personal conduct without any prior disciplinary action.
- (4) An employee who is demoted must receive written notice of the specific reasons for the demotion, as well as notice of any applicable appeal rights.

(b) Disciplinary demotions may be accomplished in three ways:

- (1) The employee may be demoted to a lower pay grade with a reduction in salary rate as long as the new salary rate does not exceed the maximum of the salary schedule for the new lower pay grade;
- (2) The employee may be demoted to a lower pay grade without a reduction in salary rate as long as the salary rate does not exceed the maximum of the salary schedule for the new lower pay grade; or
- (3) The employee may be demoted while retaining the same pay grade with a reduction in salary rate. In no event shall an employee's salary rate be reduced to less than the minimum salary rate for the applicable pay grade or the special entry rate, if in effect.

(c) Prior to the decision to demote an employee for disciplinary reasons, a management representative must conduct a pre-demotion conference with the employee in accordance with the procedural requirements of this Section.

History Note: Authority G.S. 126-4(6);
Eff. October 1, 1984;
Amended Eff. October 1, 1995; January 1, 1989.

25 NCAC 01J .0613 PROCEDURAL REQUIREMENTS

The following procedural requirements shall be followed to issue disciplinary action under this Section:

- (1) **WRITTEN WARNING** - to issue a written warning to an employee, a supervisor shall issue the employee a written warning, detailing the matters referenced in Rule .0610(a)(1) - (5) of this Section and including any applicable appeal rights.
- (2) **DISCIPLINARY SUSPENSION WITHOUT PAY** - to place an employee on disciplinary suspension without pay, a supervisor shall comply with the following procedural requirements:
 - (a) In matters of unsatisfactory job performance, insure that the employee has received at least one prior disciplinary action. In matters of grossly inefficient job performance or unacceptable personal conduct there are no pre-conditions so an employee may be suspended without pay for a current incident of grossly inefficient performance or unacceptable misconduct;
 - (b) Schedule and conduct a pre-suspension conference. Advance oral or written notice of the appropriate pre-disciplinary conference shall be given to the employee of the time, location, and the issue for which discipline has been recommended. The amount of advance notice shall be as much as is practical under the circumstances;
 - (c) Furnish the employee a statement in writing setting forth the specific acts or omissions that are the reasons for the suspension;
 - (d) Advise the employee of any applicable appeal rights in the document effecting the suspension.
- (3) **DEMOTION** - to demote an employee, a supervisor shall comply with the following procedural requirements:
 - (a) In matters of unsatisfactory job performance, insure that the employee has received at least one prior disciplinary action;
 - (b) In matters of grossly inefficient job performance or unacceptable personal conduct, there is no requirement for previous disciplinary action, so an employee may be demoted for a current incident of grossly inefficient job performance or unacceptable personal conduct without any prior disciplinary action;
 - (c) Advance oral or written notice of the appropriate pre-disciplinary conference shall be given to the employee of the time, location, and the issue for which discipline has been recommended. The amount of advance notice shall be as much as is practical under the circumstances;
 - (d) An employee who is demoted shall receive written notice of the specific acts or omissions that are the reasons for the demotion;
 - (e) An employee shall be advised of how and to what extent the demotion will affect the employee's salary rate or pay grade; and
 - (f) The employee shall also be advised of any applicable appeal rights in the document effecting the demotion.
- (4) **DISMISSAL** - Before an employee may be dismissed, a supervisor shall comply with the following procedural requirements:
 - (a) The Supervisor recommending dismissal shall discuss the recommendation with appropriate agency management and receive management's authorization to hold a pre-dismissal conference with the employee. The person conducting the pre-dismissal conference shall have the authority to recommend or to decide what, if any disciplinary action shall be imposed on the employee;
 - (b) The Supervisor or designated management representative shall schedule a pre-dismissal conference with the employee;
 - (c) Advance written notice of the pre-dismissal conference shall be given to the employee of the time, location, and the issue for which dismissal has been recommended. The amount of advance notice shall be as much as is practical under the circumstances;
 - (d) The Supervisor or designated management representative shall conduct a pre-dismissal conference with the employee, limiting attendance to the employee and the person conducting the conference; a second management representative may be present at management's discretion. The purpose of the pre-dismissal conference shall be to review the recommendation for dismissal with the affected employee and to listen to and to consider any information put forth by the employee, in order to insure that a dismissal decision is sound and not based on misinformation or mistake. Security personnel may be present when, in the discretion of the person conducting the

conference, a need for security exists. No attorneys representing either side may attend the conference;

- (e) In the conference, the Supervisor shall give the employee oral or written notice of the recommendation for dismissal, including specific reasons for the proposed dismissal and a summary of the information supporting that recommendation. The employee shall have an opportunity to respond to the proposed dismissal, to refute information supporting the recommended dismissal action and to offer information or arguments in support of the employee's position. Every effort shall be made by the Supervisor or the designated management representative to assure that the employee has had a full opportunity to set forth any available information in opposition to the recommendation to dismiss prior to the end of the conference. This opportunity shall not include the right to present witnesses;
- (f) Following the conference, management shall review and consider the response of the employee and reach a decision on the proposed recommendation. If management's decision is to dismiss the employee, a written letter of dismissal containing the specific reasons for dismissal, the effective date of the dismissal and the employee's appeal rights shall be issued to the employee in person or by certified mail, return receipt requested, to the last known address of the employee. To minimize the risk of dismissal upon erroneous information, and to allow time following the conference for management to review all necessary information, the decision to dismiss should not be communicated to the employee in accordance with this Paragraph, prior to the beginning of the next business day following the conclusion of the pre-dismissal conference or after the end of the second business day following the completion of the pre-dismissal conference;
- (g) The effective date of a dismissal for unsatisfactory job performance shall be determined by management. A career employee who is dismissed for unsatisfactory job performance may, at management's discretion, be given up to two weeks' working notice of his dismissal. Instead of providing up to two weeks' working notice and at the discretion of management, an employee may be given up to two weeks' pay in lieu of the working notice. Such working notice or pay in lieu of notice is applicable only to dismissals for unsatisfactory job performance. The effective date of the dismissal shall not be earlier than the letter of dismissal nor more than 14 calendar days after the notice of dismissal; and
- (h) If an employee is dismissed and appeals his dismissal through the agency grievance procedure, the final agency decision shall set forth the specific acts or omissions that are the basis of the employee's dismissal. In addition, the employee shall be informed in the final agency decision letter that the final agency decision letter is a public record and that the agency is required by law to release it pursuant to any public record requests.

*History Note: Authority G.S. 126-4; 126-35;
Eff. October 1, 1995;
Temporary Amendment Eff. February 12, 1996;
Amended Eff. August 1, 1996;
Temporary Amendment Expired November 26, 1996;
Amended Eff. February 1, 2011.*

25 NCAC 01J .0614 DEFINITIONS

As used in this Subchapter:

- (1) Current Unresolved Incident means conduct or performance that:
 - (a) constitutes a violation of this Section; and
 - (b) for which no disciplinary action has been previously imposed or issued by agency or university management.
- (2) Disciplinary Demotion means a personnel action taken, without employee agreement, to discipline the employee, which results in:
 - (a) reduction in salary within the employee's current classification;
 - (b) an assignment to a position in a lower salary grade without a corresponding loss of salary; or
 - (c) an assignment to a position in a lower salary grade with a corresponding loss of salary.

- (3) Disciplinary Suspension Without Pay means the removal of an employee from work for disciplinary purposes without paying the employee.
- (4) Dismissal means the involuntary termination or ending of the employment of an employee for disciplinary purposes or failure to obtain or maintain necessary credentials.
- (5) Gross Inefficiency (Grossly Inefficient Job Performance) means a type of unsatisfactory job performance that occurs in instances in which the employee: fails to satisfactorily perform job requirements as specified in the job description, work plan, or as directed by the management of the work unit or agency; and, that failure results in
 - (a) the creation of the potential for death or serious bodily injury to an employee(s) or to members of the public or to a person(s) over whom the employee has responsibility; or
 - (b) the loss of or damage to state property or funds that result in a serious impact on the State or work unit.
- (6) Inactive Disciplinary Action means any disciplinary action issued after October 1, 1995 is deemed inactive for the purpose of this Section if:
 - (a) the manager or supervisor notes in the employee's personnel file that the reason for the disciplinary action has been resolved or corrected;
 - (b) the purpose for a performance-based disciplinary action has been achieved, as evidenced by a summary performance rating of level 3 (Good) or other official designation of performance at an acceptable level or better and at least a level 3 or better in the performance area cited in the warning or disciplinary action, following the disciplinary warning or action; or
 - (c) 18 months have passed since the warning or disciplinary action, the employee does not have another active warning or disciplinary action which occurred within the last 18 months.
- (7) Insubordination means the willful failure or refusal to carry out a reasonable order from an authorized supervisor. Insubordination is unacceptable personal conduct for which any level of discipline, including dismissal, may be imposed without prior warning.
- (8) Unacceptable Personal Conduct means:
 - (a) conduct for which no reasonable person should expect to receive prior warning;
 - (b) job-related conduct which constitutes a violation of state or federal law;
 - (c) conviction of a felony or an offense involving moral turpitude that is detrimental to or impacts the employee's service to the State;
 - (d) the willful violation of known or written work rules;
 - (e) conduct unbecoming a state employee that is detrimental to state service;
 - (f) the abuse of client(s), patient(s), student(s) or a person(s) over whom the employee has charge or to whom the employee has a responsibility or an animal owned by the State;
 - (g) absence from work after all authorized leave credits and benefits have been exhausted; or
 - (h) falsification of a state application or in other employment documentation.
- (9) Unsatisfactory Job Performance means work-related performance that fails to satisfactorily meet job requirements as specified in the relevant job description, work plan, or as directed by the management of the work unit or agency.

*History Note: Authority G.S. 126-4; 126-35;
Eff. October 1, 1995;
Amended Eff. January 1, 2011.*

25 NCAC 01J .0615 INVESTIGATORY LEAVE

(a) Investigatory leave with pay shall be used to temporarily remove an employee from work status. Placement on investigatory leave with pay shall not constitute a disciplinary action as defined in this Section, G.S. 126-34.02, or in G.S. 126-35. Management shall notify an employee in writing of the reasons for placement on investigatory leave not later than the second scheduled work day after the beginning of the placement. Investigatory leave with pay may last no longer than 30 calendar days without written approval of extension by the agency head and the State Human Resources Director. The State Human Resources Director shall approve an extension of the period of investigatory leave with pay, for no more than an additional 30 calendar days, for one or more of the following reasons:

- (1) the matter is being investigated by law enforcement personnel, the investigation is not complete, and the agency is unable to complete its own independent investigation without facts contained in the law enforcement investigation, and the agency is unable to conduct its own investigation;
 - (2) a management individual who is necessary for resolution of the matter is unavailable; or
 - (3) a person or persons whose information is necessary for resolution of the matter is/are unavailable.
- (b) When an extension beyond the 30-day period is required, the agency shall advise the employee in writing of the extension, the length of the extension, and the reasons for the extension. If no action has been taken by an agency by the end of the 30-day period and no further extension has been granted, the agency shall either take appropriate disciplinary action on the basis of the findings made during the investigation or return the employee to active work status. An agency shall not use placement on investigation status for the purpose of delaying an administrative decision on an employee's work status pending the resolution of a civil or criminal court matter involving the employee.
- (c) An agency may place an employee on investigatory leave only under the following circumstances:
- (1) to investigate allegations of performance or conduct deficiencies that would constitute just cause for disciplinary action;
 - (2) to provide time within which to schedule and conduct a pre-disciplinary conference;
 - (3) to avoid disruption of the work place and to protect the safety of persons or property; or
 - (4) to facilitate a management directed referral or fitness for duty/risk evaluation to ensure the employee's safety and the safety of others and to obtain medical information regarding the employee's fitness to perform his or her essential job functions.

History Note: Authority G.S. 126-4; 126-25; 126-34.02; 126-35;
 Eff. October 1, 1995;
 Amended Eff. April 1, 2015; January 1, 2011; April 1, 2005.

25 NCAC 01J .0616 CREDENTIALS

- (a) Classifications or positions required to be licensed, registered, or certified in accordance with North Carolina General Statutes shall be specified in the statement of essential qualifications or recruitment standards for classifications approved by the State Human Resources Commission. Employees in such classifications or positions shall obtain and maintain current, valid credentials.
- (b) Failure to obtain or maintain the required credentials constitutes a basis for dismissal without prior warning, consistent with dismissal for unacceptable personal conduct or grossly inefficient job performance. An employee who is dismissed for failure to obtain or maintain credentials shall be dismissed under the procedural requirements applicable to dismissals for unacceptable personal conduct or grossly inefficient job performance.
- (c) Falsification of employment credentials or other documentation in connection with securing employment constitutes just cause for disciplinary action. When credential or work history falsification is discovered after employment with a state agency, disciplinary action shall be administered as follows:
- (1) If an employee was determined to be qualified and was selected for a position based upon falsified work experience, education, registration, licensure, or certification information that was a requirement for the position, the employee shall be dismissed in accordance with Rule .0608 of this Section.
 - (2) In all other cases of post-hiring discovery of false or misleading information, disciplinary action shall be taken, but the severity of the disciplinary action shall be at the discretion of the agency head.
- (d) When credential or work history falsification is discovered before employment with a state agency, the applicant shall be disqualified from consideration for the position in question.

History Note: Authority G.S. 126-4; 126-35;
 Eff. April 1, 2015.

25 NCAC 01J .0617 DISCRIMINATION AND RETALIATION

Neither race, religion, color, national origin, sex, age, political affiliation, disability, or genetic information shall be considered in making any decisions about any term or condition of employment for any employees or applicants. Nor shall the fact that an employee or applicant has complained about discrimination or participated in a hearing, proceeding, or investigation of discrimination be considered when making any decisions about any term or condition of employment.

History Note: Authority G.S. 126-16; 126-17; 126-13.02;
 Temporary Adoption Eff. February 28, 2014;

*Temporary Adoption Expired December 12, 2014;
Eff. April 1, 2015.*

25 NCAC 01J .0618 APPEAL OF DENIAL OF VETERAN'S PREFERENCE

*History Note: Authority S.L. 2013-382, s. 6.1;
Temporary Adoption Eff. February 28, 2014;
Temporary Adoption Expired December 12, 2014.*

SECTION .0700 - WELLNESS IMPROVEMENT FOR STATE EMPLOYEES POLICY

25 NCAC 01J .0701 PURPOSE
25 NCAC 01J .0702 POLICY
25 NCAC 01J .0703 ADMINISTRATION

*History Note: Authority G.S. 126-4(10);
Eff. February 1, 1986;
Amended Eff. July 1, 1989; January 1, 1989;
Repealed Eff. January 1, 2004.*

SECTION .0800 - GOVERNOR'S AWARD FOR EXCELLENCE

25 NCAC 01J .0801 PURPOSE
25 NCAC 01J .0802 AWARDS COMMITTEE

*History Note: Authority G.S. 126-4(15);
Eff. January 1, 1989;
Amended Eff. December 1, 1995; August 2, 1993.
Repealed Eff. October 1, 2006.*

25 NCAC 01J .0803 NOMINATIONS
25 NCAC 01J .0804 AWARDS CATEGORIES

*History Note: Authority G.S. 126-4(15);
Eff. January 1, 1989;
Repealed Eff. December 1, 1995.*

25 NCAC 01J .0805 AGENCY, DEPARTMENT OR UNIVERSITY RESPONSIBILITY

*History Note: Authority G.S. 126-4(15);
Eff. January 1, 1989;
Amended Eff. December 1, 1995;
Repealed Eff. October 1, 2006.*

25 NCAC 01J .0806 NUMBER OF NOMINATIONS

*History Note: Authority G.S. 126-4(15);
Eff. January 1, 1989;
Repealed Eff. December 1, 1995.*

25 NCAC 01J .0807 CRITERIA FOR SELECTION

History Note: *Authority G.S. 126-4(15);
Eff. February 1, 1989;
Repealed Eff. December 1, 1995.*

**25 NCAC 01J .0808 TYPE OF AWARD
25 NCAC 01J .0809 PROCEDURES**

History Note: *Authority G.S. 126-4(15);
Eff. January 1, 1989;
Repealed Eff. December 1, 1995.*

SECTION .0900 - INTERNAL PERFORMANCE PAY DISPUTE RESOLUTION PROCEDURES

25 NCAC 01J .0901 A PROCEDURE SPECIFICALLY DESIGNED ONLY PERFORMANCE PAY DISPUTES

The following are requirements and guidelines for an approved internal performance pay review process which is specifically designed to handle only performance pay disputes:

- (1) Procedural:
 - (a) The employee shall have at least 15 calendar days in which to seek review of a performance pay decision from the date of receipt of action being disputed.
 - (b) An employee must receive a decision in writing by the agency head. This decision is final and cannot be appealed further. The agency should strive to see that the process is concluded within a reasonable period of time.
 - (c) Employees who receive an overall summary appraisal of less than "exceeds" must be informed in writing of the availability of an internal performance pay dispute resolution process and the time limit for filing a complaint at the time the overall summary rating is given.
 - (d) Employees who receive an overall summary rating of "exceeds" do not need to be informed at that time concerning the availability of an internal performance pay dispute resolution process and the time limit for filing a complaint. That information must be given to them when the decision concerning whether a performance pay increase will be given and the amount of such an increase is communicated. The employee, at the time that a decision is communicated, must be given written notice of the complaint resolution procedure and the time limit in which to file a complaint.
 - (e) Although a complaint may involve one or more issues in this area, an employee shall have only one opportunity to file a complaint on those issues. The final agency decision shall resolve all issues involving an employee's complaint so that no further appeal by the employee is necessary to resolve additional issues.
- (2) The Review Mechanism:
 - (a) The first step in reviewing a performance management decision complaint shall be for the employee to review his complaint with his immediate supervisor or the appropriate management person. If the employee is not satisfied with the first step response, the next level of review will be by either the agency grievance committee or a separately constituted dispute resolution review board.
 - (b) The review will be conducted by a board consisting of at least three persons who will take information from the employee and from management's representative and will make a written recommendation, consistent with the information received, to the agency head. The agency head shall have the authority to accept or modify the board's recommendation or to adopt a different decision.
 - (c) Neither side will be permitted to be represented by an attorney. The proceeding shall not be tape recorded except as an administrative convenience to the review board. No person shall be required to testify under oath.

- (d) The employee must be allowed to appear in person before the review board before a final agency decision is rendered.
 - (e) The review shall be held within reasonable geographic proximity to the employee's worksite. Witnesses, other than the employee and management's representative, shall be strictly limited. All members of the board shall be allowed to ask questions of the employee and management's representative. A majority vote, rather than a unanimous vote, of the board shall decide the recommendation to the agency head. Any travel required of the employee in order to get to the location of the review board hearing shall be done on state time; any mileage incurred as a result of this travel shall be reimbursed under existing budget guidelines.
- (3) Agency Options:
- (a) The agency may maintain a pool of qualified employees from whom boards can be constituted as needed or it may maintain a standing review board. If a standing board is chosen, it should consist of at least five members. The composition of the board should include representatives of all levels, including management, supervisors and non-supervisory members. Whether a standing board or a pool of board members is used, each individual review board must have at least two non-supervisory employees as members. Existing Personnel Commission policy (see 25 NCAC 1J .0503) concerning composition of grievance committees should be applied.
 - (b) The agency head should state in writing why he is not accepting the recommendation of the board.
 - (c) The agency head may choose to meet with the employee before reaching a final decision.
- (4) Employee Options:
- (a) The employee may speak in his own behalf. The employee may choose not to appear, but may have the matter reviewed on documentation provided by the employee and management.
 - (b) The employee may disqualify up to two of the board members designated to serve on his review board. Any board member disqualified by the employee shall be replaced with another member. Action by the employee in disqualifying a member or members from the board shall not operate to reduce the number of non-supervisory employees on the board to less than two.
- (5) Each agency and university which elects to use this procedure must submit its proposed procedure to the Office of State Human Resources no later than January 2, 1990 for review and provisional approval. The Office of State Human Resources shall transmit each procedure which has been provisionally approved to the State Human Resources Commission for its review and approval.

History Note: Authority G.S. 126-4;
 Eff. January 1, 1990;
 Amended Eff. November 1, 1990.

25 NCAC 01J .0902 REVIEW/PERFORMANCE PAY DISPUTES USING THE GRIEVANCE PROCEDURE

The following are requirements and guidelines for using an existing internal grievance procedure to incorporate a performance pay dispute review process:

- (1) A performance pay dispute grievance may only proceed to those steps which have been given authority by the agency head to make a decision. Employees shall not be required to go to a level which does not have the authority to reverse the decision they are disputing. All applicable time frames of the grievance procedure, particularly in regard to turnaround time for decisions, shall be observed. All procedural aspects of the grievance procedure shall remain unchanged. As much as is possible, the agency should strive to give the employee a final agency decision in a reasonable period of time.
- (2) The employee may remove up to two of the initial members of the grievance committee. If a member is removed, he shall be replaced with another member.
- (3) The grievance committee shall contain at least two non-supervisory employees as part of its makeup. Action by the employee in removing a member or members from the committee shall not operate to reduce the number of non-supervisory employees on the committee to less than two.

History Note: Authority G.S. 126-4;
 Eff. January 1, 1990.

25 NCAC 01J .0903 DEFINITIONS

The following are definitions to be used in this Section:

- (1) Performance pay dispute: A complaint by an employee concerning the amount of performance increase, the performance rating or a failure to receive any performance increase.
- (2) Employee: Any employee who has successfully completed an initial probationary period.
- (3) Remedy: The removal of a performance rating found to be inaccurate or misleading; the retroactive or prospective adjustment or granting of performance pay increase.
- (4) Final agency decision: A decision in writing by the agency head.

History Note: Authority G.S. 126-4; 126-25;
 Eff. January 1, 1990.

SECTION .1000 - STATE EMPLOYEES' ASSISTANCE PROGRAM

- 25 NCAC 01J .1001 PURPOSE**
- 25 NCAC 01J .1002 POLICY**
- 25 NCAC 01J .1003 ORGANIZATION OF PROGRAM**
- 25 NCAC 01J .1004 SERVICES OFFERED TO AGENCIES, UNIVERSITIES AND EMPLOYEES**

History Note: Authority G.S. 126-4(10);
 Eff. June 1, 1992;
 Repealed Eff. August 1, 2004.

25 NCAC 01J .1005 ELIGIBILITY FOR SERVICES

History Note: Authority G.S. 126-4(10); 126-10;
 Eff. August 3, 1992;
 Repealed Eff. August 1, 2004.

- 25 NCAC 01J .1006 SELF REFERRAL**
- 25 NCAC 01J .1007 SUPERVISORY REFERRAL**
- 25 NCAC 01J .1008 MANAGEMENT DIRECTED REFERRAL**
- 25 NCAC 01J .1009 CONFIDENTIALITY**
- 25 NCAC 01J .1010 RESPONSIBILITIES OF THE EMPLOYEE ASSISTANCE PROGRAM**
- 25 NCAC 01J .1011 RESPONSIBILITIES OF AGENCIES/UNIVERSITIES**

History Note: Authority G.S. 126-4(10);
 Eff. June 1, 1992;
 Repealed Eff. August 1, 2004.

25 NCAC 01J .1012 PURPOSE

The State Employees' Assistance Program [EAP] is a worksite-based program that addresses productivity and fitness-for-duty issues by supporting employees and management in identifying and resolving personal concerns that adversely affect job performance or personal conduct. All referrals to the State Employees' Assistance Program shall originate from management in consultation with the agency or university Human Resources Office.

History Note: Authority G.S. 126-4(10);
 Eff. August 1, 2004.

SECTION .1100 - UNLAWFUL WORKPLACE HARRASSMENT

25 NCAC 01J .1101 UNLAWFUL WORKPLACE HARASSMENT AND RETALIATION

(a) Purpose. The purpose of this Rule is to establish that the State of North Carolina prohibits in any form unlawful workplace harassment, including sexual harassment or retaliation based on opposition to unlawful workplace harassment of state employees or applicants. Every agency with employees subject to the State Human Resources Act shall develop strategies to ensure that work sites are free of unlawful workplace harassment, sexual harassment discrimination and retaliation.

(b) As used in this Rule:

- (1) "unlawful workplace harassment" means unsolicited and unwelcome speech or conduct based upon race, religion, color, national origin, sex, age, disability, genetic information, or political affiliation that creates a hostile work environment or under circumstances involving quid pro quo."
- (2) "sexual harassment" means unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct when:
 - (A) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or
 - (B) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; and
 - (C) the conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.
- (3) "retaliation" means adverse action taken against an individual for filing a discrimination charge; testifying; or participating in any way in an investigation, proceeding, or lawsuit related to discriminatory employment practices based on race, religion, color, national origin, sex, age, disability, political affiliation or genetic information; or because of opposition to employment practices in violation of the unlawful workplace harassment policy.

(c) Policy. No state employee shall engage in conduct that falls under the definition of unlawful workplace harassment, sexual harassment or retaliation, and no personnel employment decisions shall be made on the basis of race, sex, religion, national origin, age, color, disability, political affiliation, or genetic information.

(d) All employees are guaranteed the right to work in an environment free from unlawful workplace harassment and retaliation.

(e) Coverage of this Rule includes:

- (1) applicants,
- (2) former employees, and
- (3) full-time and part-time employees with either a permanent, probationary, trainee, time-limited, or temporary appointment.

(f) Agency Workplace Harassment Prevention Strategies. Each agency head shall develop strategies to prevent unlawful workplace harassment, sexual harassment, or retaliation. These strategies shall include:

- (1) a commitment by the agency to the prohibition of unlawful workplace harassment, sexual harassment or retaliation;
- (2) training and other methods to prevent harassing or retaliating actions; and
- (3) a process for disseminating information prohibiting unlawful workplace harassment and retaliation to all agency employees.

Workplace harassment prevention strategies shall be included as part of the agency Equal Employment Opportunity (EEO) plan.

History Note: Authority G.S. 126-4; 126-16; 126-17; 126-34.01; 126-34.02; 126-36; Eff. December 1, 1980; Amended Eff. November 1, 1988; April 1, 1983; Temporary Amendment Eff. February 18, 1999; Amended Eff. July 18, 2002; Recodified from 25 NCAC 01C .0214 Eff. December 29, 2003; Amended Eff. June 1, 2012; Temporary Amendment Eff. May 23, 2014; Amended Eff. April 1, 2015.

SECTION .1200 – EMPLOYEE GRIEVANCES

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| 25 NCAC 01J .1201 | GENERAL PROVISIONS |
| 25 NCAC 01J .1202 | AGENCY RESPONSIBILITIES |
| 25 NCAC 01J .1203 | AGENCY GRIEVANCE REPORTS |
| 25 NCAC 01J .1204 | DISCRIMINATION AND RETALIATION / SPECIAL PROVISIONS |
| 25 NCAC 01J .1205 | UNLAWFUL WORKPLACE HARASSMENT |
| 25 NCAC 01J .1206 | TIME LIMITS |
| 25 NCAC 01J .1207 | FINAL AGENCY ACTION |
| 25 NCAC 01J .1208 | LEAVE IN CONNECTION WITH GRIEVANCES |

History Note: Authority G.S. 126-1.1; 126-4(9); 126-4(11); 126-4(17); 126-7.2; 126-16; 126-17; 126-25; 126-34.01; 126-34.02; 126-35; 150B-23(a);
 Eff. March 1, 2005;
 Temporary Repeal Eff. May 23, 2014;
 Repealed Eff. April 1, 2015.

SECTION .1300 - EMPLOYEE APPEALS AND GRIEVANCE PROCESS

25 NCAC 01J .1301 MINIMUM PROCEDURAL REQUIREMENTS

History Note: Authority G.S. 126-4(9); 126-4(10); 126-4(17); 126-7.2; 126-16; 126-34.01; 126-34.02; 126-35; 150B-23;
 Eff. March 1, 2005;
 Temporary Repeal Eff. May 23, 2014;
 Repealed Eff. April 1, 2015.

25 NCAC 01J .1302 GENERAL AGENCY GRIEVANCE PROCEDURE REQUIREMENTS

- (a) All agencies and universities shall adopt the Employee Grievance Policy, which shall be approved by the State Human Resources Commission, based on the standards in Paragraph (d) of this Rule.
- (b) Grievances filed that are not in accordance with Subparagraph (d)(5) of this Rule shall be dismissed.
- (c) A grievant who has an unexcused failure to attend the Step 1 - Mediation or Step 2 - Hearing as scheduled forfeits the right to proceed with the grievance process.
- (d) An agency or university grievance process shall include the following:
 - (1) a list of who may file a grievance;
 - (2) a list of grounds for filing a grievance under the internal grievance process;
 - (3) a list of grounds for which contested cases may be brought to the Office of Administrative Hearings after the conclusion of the grievance process in accordance with G.S. 126-34.02;
 - (4) an informal process for attempting to resolve a grievable issue prior to the employee's filing a formal grievance;
 - (5) a 30 day timeframe in which grievable issues must be raised in both the informal and formal grievance process, except for grievances covered by Rule .0603 of this Subchapter;
 - (6) a 90 day timeframe in which the agency or university must complete the entire informal process and the process shall describe each step of the formal grievance process;
 - (7) mediation shall serve as Step 1 of the formal grievance process. A description of the mediation process and timeframe to be followed in Step 1 shall state that a mediation agreement is legally binding and that if impasse occurs, the agency shall inform the grievant of the Step 2 grievance process and timeframe for filing;
 - (8) a Hearing shall serve as Step 2 of the formal grievance process. A description of the hearing process and timeframe to be followed in Step 2 shall be provided, including that a grievant has the opportunity to present the grievance orally to a reviewer(s) outside the grievant's chain of command, meaning a hearing officer or hearing panel. The hearing officer or hearing panel chair shall draft a proposed recommendation with findings of fact for a final agency decision;
 - (9) the process and timeframe for the proposed recommendation to be submitted to the Office of State Human Resources for review and approval;

- (10) the process and timeframe for issuance of a Final Agency Decision shall not exceed 90 calendar days of the initial filing of the grievance in the formal grievance process;
- (11) information about any applicable appeal rights to the Office of Administrative Hearings shall be included in the Final Agency Decision;
- (12) the responsibilities of all parties involved in the grievance process to include: grievant, respondent, hearing officer, hearing panel and chair, agency and university Human Resource Office, Equal Employment Officer, Affirmative Action Officer, Agency Head and designee, and the Director of the Office of State Human Resources and designees; and
- (13) the manner in which changes in the grievance policies shall be communicated to employees.

History Note: Authority G.S. 126-34.01; 126-34.02;
 Temporary Adoption Eff. May 23, 2014;
 Eff. April 1, 2015.

25 NCAC 01J .1303 AGENCY AND UNIVERSITY GRIEVANCE REPORTS AND DATA ENTRY

- (a) Every agency and university shall, as requested by the Office of State Human Resources, compile information on employee grievances.
- (b) The Office of State Human Resources shall make reports to the State Human Resources Commission as necessary based upon the information supplied in agency reports.
- (c) Every agency and university shall maintain all grievance data and enter grievance data by the last business day of the month in the State's HR and Payroll system or other applicable human resources information system.

History Note: Authority: G.S. 126-4(6),(9);
 Temporary Adoption Eff. May 23, 2014;
 Eff. April 1, 2015.

25 NCAC 01J .1304 SETTLEMENTS/CONSENT AGREEMENTS IN GRIEVANCES, CONTESTED CASES

- (a) Any mediation agreement, settlement agreement, or consent agreement in a grievance or contested case that requires the entering of data into human resources and payroll information system used by agencies with employees subject to G.S. 126, shall be approved by the Office of State Human Resources for compliance with all rules contained in Subchapters 1C (Personnel Administration), 1D (Compensation), 1E (Employee Benefits), 1H (Recruitment and Selection), and 1J (Employee Relations) in Title 25 of the North Carolina Administrative Code before the agency enters the data.
- (b) Data shall be entered into the human resources and payroll information system by an agency when it determines that an action shall be taken that affects classification, salary, leave, demotion, reassignment, transfer, or for any other human resources action, except where the only personnel action taken as a result of the settlement is the substitution of a resignation for a dismissal.
- (c) Approval by the Office of State Human Resources shall be indicated by the signature of the State Human Resources Director or his or her designee in an appropriate place on the settlement or consent agreement to the Office of State Human Resources Director. This provision shall not be construed to require Office of State Human Resources' approval of a settlement in which the only portion requiring approval is the awarding of attorney's fees to the employee's attorney by the Office of Administrative Hearings.
- (d) This provision shall also not be construed to require approval of any settlement the terms of which allow an employee to substitute a resignation for a dismissal and to withdraw a grievance or a contested case action.
- (e) The provisions of 25 NCAC 01A .0104 (EXCEPTIONS AND VARIANCES) shall be complied with when any provision of a settlement or consent agreement in a grievance or contested case requires an exception to or variance from the rules in this Chapter contained in Subchapters 1C (Personnel Administration), 1D (Compensation), 1E (Employee Benefits), 1H (Recruitment and Selection), and 1J (Employee Relations). This compliance shall be in addition to the requirements of this Rule. Any settlement or consent agreement that contains a provision that requires an exception to or variance from existing human resources policy shall be reviewed and approved by the Office of State Human Resources Director prior to the processing of any human resources action forms by the Office of State Human Resources or the university human resources and payroll system.
- (f) Requests to enter data into the State's human resources and payroll system that are required by the provisions of any settlement or consent agreement that has not been approved by the Office of State Human Resources as required by this Rule

shall not be processed by the human resources and payroll information system used by agencies with employees subject to G.S. 126, and shall be returned to the agency without action.

(g) No agency shall agree to any mediation agreement, settlement agreement, or consent agreement entered under G.S. 126 that does not comply with the rules in this Subchapter. However, no rules in this Subchapter shall constrain the authority of any agency to request an exception from these rules; nor shall any provision of these rules restrict the discretion and authority of any decision maker applying these Rules to apply the rules consistent with the decision maker's discretion and authority.

History Note: Authority. 126-4; 126-34.01;
Temporary Adoption Eff. May 23, 2014;
Eff. May 1, 2015.

25 NCAC 01J .1305 OFFICE OF STATE HUMAN RESOURCES REVIEW AND APPROVAL OF FINAL AGENCY DECISION (FAD)

The Director of the Office of State Human Resources or his or her designee:

- (1) shall review every agency or university final agency decision (FAD);
- (2) shall establish criteria and standards for the content of a FAD; and
- (3) may approve as written or make recommendations for modifications or reversal to the agency.

History Note: Authority G.S. 126-34.01; 126-34.02;
Temporary Adoption Eff. May 23, 2014;
Eff. April 1, 2015.

25 NCAC 01J .1306 BACKPAY

In grievances filed on or after August 21, 2013:

- (1) Back pay may be awarded in all cases in which back pay is warranted by law.
- (2) Full or partial back pay shall not be dependent upon whether reinstatement is ordered.
- (3) Gross back pay shall always be reduced by any interim earnings, except that interim earnings from employment that was approved secondary employment prior to dismissal shall not be set off against gross back pay. Any unemployment insurance benefits paid to the employee shall also be deducted from the gross back pay amount due if unemployment insurance benefits were not taxed when received by the employee.
- (4) All applicable state and federal withholding taxes, including social security taxes, shall be paid from the reduced gross back pay due. "Reduced gross back pay" is gross back pay due minus interim earnings and unemployment insurance benefits received.
- (5) The employee's regular retirement contribution shall be paid on the total, unreduced amount of gross back pay due.
- (6) Back pay shall include payment for all holidays that the grievant would have been paid for except for the interruption in employment status. Holiday premium pay shall not be a part of any back pay award.
- (7) Shift pay shall be a part of a back pay award if the grievant would have been entitled to the pay in the absence of the interruption in employment. This benefit shall not be applicable in cases involving a failure to hire or a failure to promote.
- (8) Employees shall not be entitled to any discretionary pay that may or may not have been awarded to them in the absence of the interruption in employment, including merit increments.
- (9) Back pay shall include any across the board compensation that would have been included in the grievant's regular salary except for the interruption in employment. This includes one time "bonuses," and across the board legislative pay increases.
- (10) If the grievant's longevity eligibility date occurred during the period of interrupted employment, backpay shall include the difference between the prorated longevity payment made at dismissal and the amount of longevity pay that would have been payable had employment not been interrupted. If the grievant is reinstated prior to his or her longevity date, no adjustment for longevity pay shall be made in the backpay award. The prorated longevity payment made at the time of dismissal shall be deducted from the full amount otherwise payable on the next longevity eligibility date.

- (11) Back pay shall be applied for on the appropriate Office of State Human Resources form, available on the Office of State Human Resources website, www.oshr.nc.gov. The back pay application form requires the following information:
- (a) agency or university name;
 - (b) division or department or school;
 - (c) employee name;
 - (d) social security number;
 - (e) position classification;
 - (f) position number; and
 - (g) a notarized sworn statement verifying the following information for a total earnings calculation:
 - (i) gross earnings for back pay;
 - (ii) interim income, not including secondary employment approved prior to adverse action; and
 - (iii) unemployment compensation (untaxed).
- (12) One component of the decision to award back pay shall be evidence, if any, of the grievant's efforts to obtain available, suitable employment following separation from state government. The burden of proof that an employee mitigated his or her lost wages by seeking employment following separation shall be on the employee.

History Note: Authority G.S. 126-4(9); 126-34.01; 126-34.02;
 Temporary Adoption Eff. May 23, 2014;
 Eff. April 1, 2015.

25 NCAC 01J .1307 FRONT PAY

In grievances filed on or after August 21, 2013:

- (1) Front pay may be awarded in all cases in which front pay is warranted by law.
- (2) "Front pay" is the payment to an employee above his or her regular salary, the excess amount representing the difference between the employee's salary in his or her current position and a higher salary determined to be appropriate due to a finding of discrimination.
- (3) Front pay may also result from an order of reinstatement to a position of a particular level that the agency is unable to accommodate immediately. Front pay shall be paid for such period as the agency is unable to hire, promote, or reinstate the employee to a position at the appropriate level and as warranted by law.
- (4) Front pay shall terminate upon acceptance or rejection of a position to which the employee has been determined to be entitled.
- (5) Front pay shall be available as a remedy in cases involving hiring, promotion, demotion, or dismissal.
- (6) Front pay shall be payable under the same conditions as back pay except that the only deductions from front pay shall be for usual and regular deductions for state and federal withholding taxes and the employee's retirement contribution. There may also be a deduction for other employment earnings, whether paid by the state or another employer, so as to avoid unjust enrichment of the grievant.
- (7) Shift pay and holiday premium pay shall not be available on front pay.

History Note: Authority G.S. 126-4(9); 126-34.02;
 Temporary Adoption Eff. May 23, 2014;
 Eff. April 1, 2015.

25 NCAC 01J .1308 LEAVE

- (a) An employee shall be credited on reinstatement with all vacation leave that would have been earned except for the interruption in employment.
- (b) An employee shall be credited on reinstatement with all sick leave that would have been earned except for the interruption in employment.
- (c) The decision as to whether or not to allow the reinstated employee to purchase back the vacation leave paid out in a lump sum at dismissal is within the discretion of the agency. A failure to allow such repurchase is not grievable.

(d) Employees reinstated from dismissal shall have their former balance of sick leave at dismissal reinstated, in addition to the credit for sick leave that would have been earned except for the dismissal.

History Note: Authority G.S. 126-4(9); 126-34.02;
Temporary Adoption Eff. February 28, 2014;
Temporary Adoption Expired December 12, 2014;
Eff. April 1, 2015.

25 NCAC 01J .1309 HEALTH INSURANCE

Employees reinstated from dismissal shall be entitled to either retroactive coverage under the state health insurance plan or to reimbursement up to the amount the state contributes for employee only coverage. The employee shall have the right to elect between these two choices, provided that if the employee elects reimbursement, the employee may do so only if the employee had secured alternate health insurance coverage during the period of interruption of employment. The employee shall not be reimbursed for the cost of coverage of dependents or spouse during the period between dismissal and reinstatement, but the employee may choose to purchase that retroactive coverage. It is the responsibility of the employee to provide proof of insurance or insured expenses incurred during the period of unemployment.

History Note: Authority G.S. 126-4(9); 126-34.02;
Temporary Adoption Eff. February 28, 2014;
Temporary Adoption Expired December 12, 2014;
Eff. April 1, 2015.

25 NCAC 01J .1310 INTEREST

The state shall not pay interest on any back pay award.

History Note: Authority 126-4(9);
Temporary Adoption Eff. May 23, 2014;
Eff. April 1, 2015.

25 NCAC 01J .1311 REINSTATEMENT

When an employee who was dismissed or demoted is reinstated, the employee shall return to employment in the same position, or a similar position at management's option, at the same salary grade or salary grade equivalency that the employee was employed prior to dismissal. The agency may reinstate an employee to a similar position assigned to a duty station that is in a different location than the prior assigned duty station. If the new duty station is 50 miles or more from the prior assigned duty station, then the agency may choose to pay moving and relocation expenses in accordance with Section 6.6 of the State Budget Manual located on the Office of State Budget and Management website at http://www.osbm.state.nc.us/files/pdf_files/BudgetManual.pdf, which is hereby incorporated by reference including any subsequent amendments and editions.

History Note: Authority G.S. 126-4(9); 126-34.02;
Temporary Adoption Eff. February 28, 2014;
Temporary Adoption Expired December 12, 2014;
Eff. April 1, 2015.

25 NCAC 01J .1312 CAUSES FOR REINSTATEMENT

For grievances filed on or after August 21, 2013, reinstatement from dismissal, suspension, or demotion may be ordered only upon a finding of lack of substantive just cause (Rule .0604 of this Subchapter); discrimination, harassment, or retaliation prohibited by G.S. 126-16 and G.S. 126-34.02; or that an employee was dismissed, suspended, or demoted in violation of G.S. 126-34.02 because he or she was a whistleblower. For the purpose of this Rule, and in addition to those matters listed in Rule .0604 of this Subchapter, failure to issue the required number and kind of warnings or other disciplinary actions prior to dismissal for unsatisfactory job performance shall constitute a lack of substantive just cause.

History Note: Authority G.S. 126-4(9); 126-34.02; 126-35;

*Temporary Adoption Eff. May 23, 2014;
Eff. April 1, 2015.*

25 NCAC 01J .1313 SUSPENSION WITHOUT PAY

For grievances filed on or after August 21, 2013, back pay shall be ordered in those cases in which it is determined that a suspension without pay lacked substantive just cause or was an act of discrimination, harassment, or retaliation prohibited by G.S. 126-16 or G.S. 126-34.02; or violated G.S. 126-34.02 because the employee was found to be whistleblower under Article 14 of Chapter 126 of the General Statutes.

*History Note: Authority G.S. 126-4(6); 126-16; 126-34.02; 126-35;
Temporary Adoption Eff. May 23, 2014;
Eff. April 1, 2015.*

25 NCAC 01J .1314 DISCRIMINATION, HARASSMENT, OR RETALIATION

For grievances filed on or after August 21, 2013, back pay, transfer, promotion, or other appropriate remedies, including corrective remedies, may be ordered where discrimination, harassment, or retaliation in violation of G.S. 126-16 or G.S. 126-34.02 is found.

*History Note: Authority G.S. 126-4(9); 126-16; 126.34.01; 126-34.02;
Temporary Adoption Eff. May 23, 2014;
Eff. April 1, 2015.*

25 NCAC 01J .1315 VOLUNTARY PROGRAMS OR BENEFITS

Voluntary programs and benefits are the choice of the employee and the employee's financial responsibility. Voluntary benefits and programs include 401K programs, voluntary health and life insurance programs, or deferred compensation. Volunteer programs and benefits shall not be addressed by any remedy under these Rules or G.S. 126. To the extent that retroactive coverage or membership is available, the grievant is responsible for initiating any necessary action against any third party to obtain such benefits.

*History Note: Authority 126-4(9); 126-34.02;
Temporary Adoption Eff. May 23, 2014;
Eff. April 1, 2015.*

25 NCAC 01J .1316 REMEDIES FOR PROCEDURAL VIOLATIONS

(a) Failure to give written notice of applicable appeal rights in connection with a dismissal, demotion, or suspension without pay shall be deemed a procedural violation. The sole remedy for this violation shall be an extension of the time in which to file an appeal. The extension shall be from the date of the procedural violation to no more than 30 calendar days from the date the employee is given written notice of applicable appeal rights.

(b) Failure to give specific reasons for dismissal, demotion, or suspension without pay shall be deemed a procedural violation. Back pay, attorney's fees, or both may be awarded for such a violation. Back pay or attorney's fees, or both may be awarded for such a period of time as is appropriate under the law, considering all the circumstances.

(c) Failure to conduct a pre-dismissal conference shall be deemed a procedural violation. Further, the remedy for this violation shall require that the employee be granted back pay from the date of the dismissal until a date determined appropriate in light of the purpose of pre-dismissal conferences, which is to provide notice to the employee and an opportunity to be heard. Reinstatement shall not be a remedy for lack of a pre-dismissal conference.

*History Note: Authority G.S. 126-4(9); 126-34.02; 126-35;
Temporary Adoption Eff. May 23, 2014;
Eff. April 1, 2015.*

25 NCAC 01J .1317 REMEDIES: SALARY ADJUSTMENTS

(a) No department, agency, or university may use within-grade or within-range salary adjustments as a method of resolving any grievance, contested case, or lawsuit without advance notice to the Office of State Human Resources and the written approval of the State Human Resources Director.

(b) Any within-grade or within-range salary adjustment proposed to be approved by the State Human Resources Director shall be in compliance with existing salary administration policies (see 25 NCAC 01D .0100 et. seq.) or have prior approval as an exception to or waiver from the policies in accordance with 25 NCAC 01A .0104.

History Note: Authority G.S. 126-4(2); 126-34.01; 126-34.02;
Temporary Adoption Eff. May 23, 2014;
Eff. April 1, 2015.

25 NCAC 01J .1318 CERTAIN REMEDIES NOT AVAILABLE

The following remedies shall not be awarded in appeals under G.S. 126:

- (1) compensatory;
- (2) punitive, except as allowed under G.S. 126-87;
- (3) exemplary; or
- (4) other special damages.

The only available relief is back pay, front pay, or other omitted benefits, along with attorney's fees in certain cases.

History Note: Authority G.S. 126-4(9); 126-34.02;
Temporary Adoption Eff. May 23, 2014;
Eff. April 1, 2015.

25 NCAC 01J .1319 SITUATIONS IN WHICH ATTORNEY'S FEES MAY BE AWARDED

For grievances filed on or after August 21, 2013, attorney's fees may be awarded only in the following situations:

- (1) the grievant is reinstated;
- (2) the grievant is awarded back pay from either a demotion or a dismissal, without regard to whether the grievant has been reinstated; or
- (3) the grievant prevails in a whistleblower grievance.

History Note: Authority G.S. 126-4(11); 126-34.02;
Temporary Adoption Eff. May 23, 2014;
Eff. April 1, 2015.

25 NCAC 01J .1320 ATTORNEY'S FEES MAY BE AWARDED AS A RESULT OF A SETTLEMENT

Attorney's fees may be paid as the result of a settlement in the grievance procedure, providing such fees are explicitly incorporated as a part of a settlement agreement signed by both parties.

History Note: Authority 126-4(11); 126-34.01; 126-34.02;
Temporary Adoption Eff. May 23, 2014;
Eff. April 1, 2015.

SECTION .1400 – EMPLOYEE MEDIATION AND GRIEVANCE PROCESS

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|--------------------------|---|
| 25 NCAC 01J .1401 | MINIMUM PROCEDURAL REQUIREMENTS |
| 25 NCAC 01J .1402 | FLEXIBILITY |
| 25 NCAC 01J .1403 | INFORMAL MEETING WITH SUPERVISOR |
| 25 NCAC 01J .1404 | MEDIATION PROCEDURE |
| 25 NCAC 01J .1405 | CONCLUSION OF MEDIATION |
| 25 NCAC 01J .1406 | LIMITATIONS ON A MEDIATION AGREEMENT |
| 25 NCAC 01J .1407 | POST MEDIATION |

History Note: Authority G.S. 126-4(1); 126-4(6); 126-4(7); 126-4(9); 126-4(10); 126-4(17); 126-16; 126-34; 126-34.1; 126-34.2; 126-35; 126-36; 126-37; 126-38; 150B-23; S.L. 2013-382;
Eff. March 1, 2005;
Temporary Repeal Eff. May 23, 2014;
Repealed Eff. April 1, 2015.

25 NCAC 01J .1408 EMPLOYEE RESPONSIBILITIES FOR MEDIATION
25 NCAC 01J .1409 AGENCY RESPONSIBILITIES FOR MEDIATION
25 NCAC 01J .1410 OFFICE OF STATE PERSONNEL RESPONSIBILITIES

History Note: Authority G.S. 126-4(6); 126-4(9); 126-4(10); 126-34-01; 126-34.02;
 Eff. March 1, 2005;
 Temporary Repeal Eff. May 23, 2014;
 Repealed Eff. April 1, 2015.

**25 NCAC 01J .1411 AGENCY PROCEDURAL REQUIREMENTS FOR EMPLOYEE MEDIATION AND GRIEVANCE
POLICY**
**25 NCAC 01J .1412 OFFICE OF STATE PERSONNEL RESPONSIBILITIES FOR EMPLOYEE MEDIATION AND
GRIEVANCE PROCESS**

History Note: Authority G.S. 126-4(9); 126-4(10); 126-34.1(a); S.L. 2013-382;
 Eff. March 1, 2005;
 Temporary Repeal Eff. May 23, 2014;
 Repealed Eff. April 1, 2015.